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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,960	12/22/2003	Anthony J. Lamela	15211	9369
37414	7590	02/13/2006	EXAMINER	
CNH AMERICA LLC INTELLECTUAL PROPERTY LAW DEPARTMENT PO BOX 1895, MS 641 NEW HOLLAND, PA 17557			YEAGLEY, DANIEL S	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/743,960	Applicant(s) LAMELA ET AL.	
	Examiner Daniel Yeagley	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 4 – 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mather et al '757 in view of Caswell '656.

Mather discloses a four-wheel driven vehicle 10 having a plurality of hydraulic pumps coupled to and driven by an engine 81, a chassis comprising a chain tank (drive housing 70) having a left and right side 72 and extends along a longitudinally extending axis (figure 1), wherein the chassis includes first chain links 90 operatively connected to at least one left-side motor 88 and the wheels 20 of a left front and a left rear suspension of the vehicle and includes second chain links 90 operatively connected to at least one right-side motor 89 and wheels 20 of a right front and a right rear suspension of the vehicle (column 4), wherein control arms of the four suspensions extend laterally away from the vehicle and are disposed at the left and right front and left and right rear of the vehicle, such that the two left side suspension control arms extend leftwardly and laterally away from the left side of the chassis, and the two right side control arms extend rightward and laterally away from the right side of the chassis (column 3), wherein the chassis has a generally vertically and longitudinally extending left side wall and a generally vertically and horizontally extending right side wall, the left front and rear control arms coupled to the left sidewall and the right front and rear control arms coupled to the right sidewall

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as claimed; wherein figures 4 and 5 further show at least one left-side motor 88 fixed to the left side 72 of the chain tank 70 and at least one right side motor 89 fixed to the right side 72 of the chain tank, wherein the left-side motor is drivingly coupled to a left drive member to two wheels of the left front and rear suspensions and the right-side motor is drivingly coupled to a right drive member to the two wheels of the right front and rear suspensions, such that the drive members remain in the same orientation relative to the left-side motor and the right-side motor, but failed to disclose a suspension having a pivoting control arm coupled to the chassis to pivot each wheel suspension about a longitudinally extending axis, and failed to show each control arm suspension having a damper means comprised of a strut coupled to the wheel and the control arm which includes a spring and at least one steering actuator.

Caswell shows a four-wheel driven vehicle that incorporates the art of utilizing individual pivotal wheel suspensions operatively connecting each wheel by a longitudinal extending axis to the vehicle, wherein the pivotal wheel suspension of Caswell further shows a suspension means that utilizes a damper means comprised of a spring strut 12 coupled to the wheel and the control arm (figure 2, column 2) which includes at least one steering actuator 26 at each control arm suspension to simultaneously steer the front wheels to the left or right while simultaneously steering the rear wheels in the opposite direction (figure 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the suspension means of Mather four-wheel chain driven skid steer vehicle with a pivotal suspension means comprising a control arm and damper arrangement as suggested by Caswell suspension means in order to independently pivot each control arm of the vehicle simply to enhance the vehicles' suspension and improve comfort of the vehicle ride as is

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well known in the suspension art by utilizing independent pivotal suspension arms for increased suspension performance and better traction to enhance the vehicles terrain versatility to negotiate undulating terrain as further suggested by Caswell vehicle and would have been obvious to one of ordinary skill in the art to have further modified the four-wheel chain driven skid-steer vehicle of Mather with a further steering means to simultaneously steer the front wheels in one direction opposite the direction of the rear wheels as further suggested by Caswell to further enhance the maneuverability of the four-wheel driven vehicle as further taught by Caswell.

3. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mather et al '757 as modified by Caswell '656 in further view of Thibodeau '051.

Mather as modified by Caswell disclosed a skid steer vehicle with a chassis and a chain tank having drive members and chain links operatively connected to left and right-side motors fixed to a chassis and included a plurality of hydraulic pumps driven by an engine, such that the left and right drive members remain in the same orientation relative to the left and the right-side motors, and wherein the wheels of a left side and the wheels of a right side include pivotal control arms as modified by Caswell extending laterally away from the vehicle chassis and pivotally coupled to the chassis to pivot the wheel suspensions about a horizontal longitudinally extending axis which included a spring strut means as modified by the suspension means of Caswell, but failed to disclose a hydraulic steering pump and a suspension control arm coupled to the chassis at a point forward the strut and at a second point rearward the strut as claimed.

Thibodeau shows a four-wheel driven vehicle comprising a chain driven right and left drive member drivingly coupled to a motor and housed in a chain tank, which shows the prior art

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of utilizing a hydraulic steering pump 226 and further showed the prior art of disposing each pivotal control arm and a damper means of the suspension means being coupled to a wheel and the chassis at one coupling point forward the strut and at a second coupling point rearward the strut (figure 7) as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the four-wheel chain driven vehicle of Mather skid steer vehicle as modified by the pivotal control arms of Caswell suspension arms with a further modification of the pivot control arms utilizing two or more coupling points for coupling the control arm to the chassis as suggested by the coupling points of Thibodeau pivotal control arm to the chassis, simply as an alternative coupling point, in order to provide a more secure coupling means for the pivotal control arm to the chassis of the vehicle as suggested by Thibodeau coupling of the control arm to the chassis and further would have been obvious to one of ordinary skill in the art to have further incorporated an additional hydraulic pump; such as a steering pump as suggested by Thibodeau as a known means to control the modified steering of the Mather vehicle as modified by Thibodeau utilizing a known steering pump as further taught by Thibodeau.

Response to Arguments

4. Applicant's arguments filed 7/29/05 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Mather '757 discloses a four wheel driven vehicle on a skid steer vehicle that comprises the claimed features of a drive means having a chassis consisting of a chain tank with a left and right chain driven by a left and right drive members which clearly remain in the same orientation relative to the left and right motors as claimed and further shows suspension arms for the wheels that extend laterally outward and coupled to the chassis but failed to show the arms being pivotally coupled to the chassis.

In response to applicant's argument that Caswell does not show a skid steer vehicle, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's arguments, the recitation of a skid steer vehicle has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Caswell '656 clearly discloses a suspension feature on a four wheel driven vehicle which incorporates pivotal arms coupled to the chassis of the vehicle as broadly claimed in order to independently suspend each wheel laterally outward from the vehicle and is capable of being used on a chassis of a skid steer vehicle to provide a dampening and suspension means to a vehicle as is well known and old in the vehicle suspension art of applying independent pivotal suspension arms to most types of vehicle chassis for better comfort, ride stability and to reduce stress factors on the vehicle components.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case; Caswell pivotal suspension arms clearly depict the known art of pivoting suspension arms from a chassis of a vehicle for providing a suspension dampening means to the suspension arm of a vehicle.

In response to applicant's argument that Caswell is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Caswell clearly discloses a suspension means for a four-wheel driven vehicle and therefore is directed to the same analogous art of Mather four-wheel driven vehicle.

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In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Priepke '535, Oswald et al '786, and Kim '821 disclose a skid steer vehicle with suspension means.

Brandt et al '188 shows a skid steer vehicle with four wheel steering.

Randle '628 shows a wishbone suspension arrangement.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.



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